

[Assembly Bill 717](#) (Gonzalez)

Date: 05/21/15

Program: Sales and Use Tax

Sponsor: Author

Code: Revenue and Taxation Code Section 6363.9

Effective: Upon enactment, but operative 90 days following 1st calendar quarter

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Summary: Exempts from the sales and use tax diapers for use by infants and toddlers.

Summary of Amendments: Since the previous analysis, the bill was amended to limit the exemption to diapers for infants and toddlers designated size 3 or under and add a sunset date.

Purpose: To provide some tax relief for California families who must incur the additional expense of acquiring diapers in the course of raising small children. According to the author, “diapers should be in the same category as food because they are a health necessity.”

Fiscal Impact Summary: Annual state and local revenue loss of \$36.2 million.

Existing Law: Except where the law provides a specific exemption or exclusion, California’s Sales and Use Tax Law¹ imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer.

Existing law provides for numerous exemptions from the sales and use tax, but no exemption or exclusion exists for diapers. However, persons engaged in providing diaper services, where cloth diapers are furnished in connection with the recurring service of laundering the diapers, are considered consumers of the diapers they provide in their service and tax applies only to the diaper service’s purchase price of the diapers. The service’s receipts from the rental of the diapers in connection with the service he or she provides are not subject to sales or use tax.²

Proposed Law: This bill adds RTC Section 6363.9 to exempt from the sales and use tax diapers designed, manufactured, processed, fabricated, or packaged for use by infants and toddlers, designated size 3 or under.

As a tax levy, the bill takes effect immediately, but becomes operative on the first day of the first calendar quarter commencing more than 90 days after enactment. The bill remains in effect only until January 1, 2021, and as of that date is repealed.

Legislative History: Three diaper exemption bills were considered during the 2001-02 and 1999-00 Legislative Sessions:

- AB 1291 (Hollingsworth, 2001) contained provisions identical to this bill.
- AB 5 (Battin, 1999) would have provided a sales and use tax exemption for baby diapers and over-the-counter, nonprescription drugs.
- AB 13 (Dickerson, 1999) would have provided a sales and use tax exemption for over-the-counter, nonprescription, nonherbal medicines that are for internal use, and incontinence products, including disposable and reusable diapers, pads, and briefs.

All three bills were held in the Assembly Revenue and Taxation Committee.

¹ Part 1 of Division 2 of the Revenue and Taxation Code (RTC) (commencing with Section 6001).

² RTC Section 6006(g)(2).

Commentary:

1. **Effect of the bill.** This bill creates an exemption from the state and local sales and use tax for purchases of diaper used by infants and toddlers designated size 3 or under. The proposed exemption would apply to disposable and nondisposable diapers. The author believes the bill could save California families up to \$100 per child a year.
2. **The May 21, 2015 amendments** (1) limit the exemption to diapers for infants and toddlers designated size 3 or under, and (2) add a January 1, 2021 sunset date.
3. **Daycare providers, diaper service providers, and hospitals would additionally benefit from the proposed exemption.** Since sales of diapers to these service enterprises are currently subject to tax, this bill would provide an additional benefit to these entities that purchase diapers for their clients.

Administrative Costs: BOE will incur absorbable administrative costs to notify affected retailers, audit claimed exemptions, amend appropriate regulations, and answer inquiries from the general public.

Revenue Impact:

Background, Methodology, and Assumptions. Nondisposable (cloth) baby diaper sales continue to diminish since the introduction of disposable diapers; however, environmental and health concerns have persuaded some parents to use cotton cloth diapers. WebMD reported that only 5% of families use cloth diapers, and the Real Diaper Association estimates that 5-10% of babies wear cloth diapers at least part time. For this estimate, we assume that 92.5% of families use disposable diapers and 7.5% use cloth diapers. According to the California Department of Finance, it is estimated that there are 1,009,464 Californians under the age of two.

Cloth Baby Diapers. Using the data above, staff estimates that 7.5% of these babies (75,710) use cloth diapers. Staff researched online cloth diaper prices at Costco, Babies R Us, Buy Buy Baby, and Target. The cost of cloth diapers range from \$12.40 per package of ten to \$16.99. On average, parents purchased 4 dozen cloth diapers. Therefore, estimated average yearly cost for cloth diapers is \$26.88 ($\$1.40 \text{ per cloth diaper} \times 4 \text{ dozen} = \$67.20 \text{ total cost divided by } 2.5 = \26.88 per year). Not all cloth diaper users purchase and home launder these diapers. Many use a diaper service that delivers freshly laundered diapers weekly and take the soiled diapers to launder. While the diaper services probably pay less for diapers, they supply more than 4 dozen for each customer. The estimated yearly cost of \$26.88 for cloth diapers includes both diaper services and home laundered diapers. Estimated sales of cloth diapers in California are \$2 million annually ($75,710 \text{ users} \times \$26.88 = \$2 \text{ million}$).

Disposable Baby Diapers. The majority of the population (92.5%) use disposable diapers. Staff researched online diaper prices at Costco, Walmart, Buy Buy Baby, Target, and Babies R Us. Generic prices ranged from \$0.13 to \$0.21 per diaper, and a national brand averaged \$0.23 per diaper. Staff used an average of \$0.19 per diaper (generic and national brand). To determine diaper usage per day, staff used DiaperPlanner.com. Per this website, the average daily diaper usage is 6.73 for the first year. Staff carried this figure over for the second year as well. Accordingly, 6.73 diapers per day at \$.19 per diaper totals \$458.89 per year. The total market for disposable diapers is approximately \$428.5 million ($933,754 \text{ children} \times \$458.89 \text{ cost of diapers per year per child}$). For cloth diapers, the total is \$2 million ($75,710 \times \$26.88 \text{ cost of cloth diapers per year}$).

Total Diaper Sales. Total sales of baby diapers for sizes newborn to three in California are estimated to be \$430.5 million (\$428.5 million for disposable diapers + \$2 million for cloth diapers).

Revenue Summary. The annual revenue loss from exempting \$430.5 million in diaper sales from the sales and use tax would be:

Fund	Rate	Revenue Loss
State General Fund	3.9375%	\$16,951,836
Prop 30	0.25%	\$1,076,307
Fiscal Recovery Fund	0.25%	\$1,076,307
Local Revenue 2011	1.0625%	\$4,574,305
Local Revenue 1991	0.50%	\$2,152,614
Public Safety Fund	0.50%	\$2,152,614
Bradley Burns	1.00%	\$4,305,228
Special District	0.92%	\$3,960,810
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Statewide Average Rate	8.42%	\$36,250,021

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.